

CONTRACT

AND

PROPOSAL

P R O P O S A L

CITY OF BLOOMINGTON

The City Council
City of Bloomington
City Hall
1800 West Old Shakopee Road
Bloomington, MN 55431

***** Bids to be received at the location as stated in the Invitation for Bids *****

Dear Council members:

In accordance with the "Invitation for Bids", inviting proposals for the construction of:

2013-305

BCS Phase 2B Infrastructure Improvements Project

Herein before described and in conformity with the Plans and Specifications on file in the office of the City Engineer, Bloomington, Minnesota, the undersigned hereby certifies that an examination has been made of the Plans and Specifications and the site of the work; and hereby proposed to furnish all necessary machinery, equipment, tools, labor, and other means of construction and to furnish all materials specified and in the manner and at the time prescribed; and understands that the quantities of work shown herein are approximate only and are subject to increase and decrease and further understands that the quantities of work (whether increased or decreased) are to be performed at the following unit prices:

City of Bloomington Contractor Information Sheet

The undersigned agrees, if awarded the Contract, to execute the Contract and undertake the work as stated in these contract documents. The undersigned further agrees to provide the required bonds, insurance and/or guarantees. Accompanying this Proposal is a 5% Bid Security which is subject to forfeiture in event of default by the undersigned. In submitting this bid, it is understood that the City reserves the right to reject any or all bids, and to award the project based on the proposal the City determines to be in its best interest, and it is agreed that this bid may not be withdrawn for a period of thirty (30) days from the opening thereof.

Is your firm in compliance with EEO requirements? ☐ Yes ☐ No

Do you have a safety program in place? ☐ Yes ☐ No

Provide your Experience Modification Rate (EMR or MOD) for workers compensation for the past three (3) years.

20____ EMR/MOD: _____

20____ EMR/MOD: _____

20____ EMR/MOD: _____

For a new firm who has not yet established an Experience Modification Rate, please provide the following information:

1. A summary of any and all accidents and OSHA recordable claims that have occurred to date, and
2. Contact information for your current insurance agent.

If a corporation, what is the state of incorporation?

If a partnership, state full names of all co-partners.

Official Address:

Name of Company: _____

By: _____

Title: _____

By: _____

Date: _____

Title: _____

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

_____ being first duly
sworn deposes and says that:

(1) He/She is _____ of _____
OWNER, PARTNER, OFFICER REPRESENTATIVE OR AGENT

_____, the Bidder that has
submitted the attached bid;

(2) He/She is fully informed respecting the preparation and contents of the attached Bid
and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives,
employees or parties in interest, including this affiant, has in any way colluded, conspired, agreed,
directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Bid in
connection with the Contract for which the attached Bid has been submitted or to refrain from
bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by
agreement or collusion or communication or conference with any other Bidder, firm or person to fix
the price or prices of the bid price or the bid price of any other Bidder, or to secure through any
collusion, conspiracy, connivance or unlawful agreement any advantage against the City of
Bloomington or any person interested in the proposed Contract and;

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by
any collusion, conspiracy, or unlawful agreement on the part of the Bidder or any of its agents,
representatives, owners, employees, or parties in interest, including this affiant.

(Signed) _____

Subscribed and sworn to before me

this _____ day of _____, 20_____

(Notary Public)

My commission expires _____

STATE OF MINNESOTA - RESPONSIBLE CONTRACTOR CERTIFICATE

Applies to all prime contracts in excess of \$50,000

A responsible contractor is defined in Minnesota Statutes §16C.285, subdivision 3.

Any prime contractor or subcontractor who does not meet the minimum criteria under Minnesota Statutes §16C.285, subdivision 3, or who fails to verify that it meets those criteria, is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project.

A false statement under oath verifying compliance with any of the minimum criteria shall render the prime contractor or subcontractor that makes the false statement ineligible to be awarded a construction contract for the project and may result in termination of a contract awarded to a prime contractor or subcontractor that makes a false statement.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause 7.

By signing this statement, I, _____(typed or printed name),
_____(title) certify that I am an owner or officer of the company and do
verify under oath that my company is in compliance with each of the minimum criteria listed in the
law.

(name of the person, partnership or corporation submitting this proposal)

(business address)

Signed: _____
(bidder or authorized representative)

Date

CONTRACT

THIS AGREEMENT, made on the _____ day of _____,
20_____, by and between the CITY OF BLOOMINGTON, party of the first part, hereinafter
called the CITY, and _____ party of the second part,
hereinafter called the CONTRACTOR.

WITNESSETH, that the Contractor and the City, for the considerations hereinafter
named, agree as follows:

I. SCOPE OF WORK

The Contractor hereby agrees to furnish all of the materials and all of the equipment and labor necessary, and to perform all of the work shown on the Plans and described in the Specifications for the project entitled:

2013-305

BCS Phase 2B Infrastructure Improvements Project

in accordance with the requirements and provisions of the Contract Documents as defined in the General Specifications which are hereby made a part of this Agreement.

II. TIME OF COMPLETION

The work to be performed under this Contract shall be commenced within eight (8) calendar days after the date of written notice by the City to the Contractor to proceed. The construction of the improvements shall be completed as specified in the Special Provisions.

III. PAYMENT

A. The Contract Sum - The City shall pay to the Contractor, for the duration of the Contract the amounts determined for the total number of units of work completed at the unit price stated in the attached Bid Proposal. The number of units contained in this Bid Proposal is an approximation only, and the final payment shall be made for the actual number of units that are installed, constructed or otherwise incorporated as part of the work covered by the Contract.

B. Progress Payments

1. The City Engineer shall prepare an estimate covering the total quantities under each item of work that has been completed from the start of the job, up to and including the last day of the preceding month, and the value of the work completed, determined in accordance with the schedule of unit prices for such items, on or not later than the fifth (5th) day of each month. This estimate shall also include an allowance for the cost of such materials and equipment required to perform the permanent work as has been delivered to the site and suitably protected by the Contractor but not as yet incorporated in the work.

2. The City shall pay to the Contractor an amount which, together with previous payments, equals 95% of the amount of the monthly estimate of the City Engineer, not later than the fifteenth (15th) day of the month.
3. Upon the determination of the City Engineer that the work of the project is 95% or more completed, the City shall release such portions of the retained contract price as the City Engineer determines are not required to be retained to protect the City's interest in satisfactory completion of the contract.

IV. ACCEPTANCE AND FINAL PAYMENT

- A. Upon receipt of written notice that the work is ready for final inspection and acceptance, the City Engineer shall within ten (10) days make such inspection. When he/she finds the work acceptable under the Contract and the Contract fully performed, he/she will issue a final estimate (i.e., final pay application or final payment). The final estimate shall constitute final acceptance and serve as the final certificate for the project.
- B. Before final payment is due, the Contractor shall submit evidence satisfactory to the City Engineer that all payrolls, material bills, and other indebtedness connected with the work have been paid, except that in case of disputed indebtedness of liens the Contractor may submit in lieu of evidence of payment a surety bond satisfactory to the City guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by surety bond.
- C. The making and acceptance of the final payment shall constitute a waiver of all claims by both parties, other than those arising from:
 1. Unsettled liens;
 2. From faulty work appearing within 12 months after final payment;
 3. From requirements of the specifications, or from manufacturers' guarantee; and/or
 4. Claims previously made and still unsettled.

V. AUDIT

All books, records, documents and accounting procedures and practices of the Contractor relevant to this Contract shall, pursuant to Minn. Stat. § 16C.05, subd. 5 be subject to examination at all times by the City, and as appropriate, by either the legislative or state auditor.

VI. PRIORITY

If there is a conflict or inconsistency between this Agreement and the Specifications and Special Provisions, the parties agree to the following priority of documents:

- A. This Agreement.
- B. Special Provisions and Specifications

VII. INDEPENDENT CONTRACTOR

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the Contractor's staff as the agents, representatives or employees of the City for any purpose in any manner whatsoever. The Contractor and its staff are to be and shall remain an independent Contractor with respect to all services performed under this Agreement. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of the Contractor or other persons, while engaged in the performance of any work or services required by the Contractor under this Agreement shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Contractor, its officers, agents, contractors or employees shall in no way be the responsibility of the City; and the Contractor shall defend, indemnify and hold the City, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the City, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, severance pay and PERA.

VIII. MISCELLANEOUS

- A. The Contractor shall furnish within seven (7) days after notice of acceptance of the bid two (2) bonds, a performance and payment bond, each in the amount of the full contract price, and in compliance with State statutes to guarantee the faithful performance of the Contract and the payment of all labor, mechanics, subcontractors and material. In addition to the term of this Agreement, the performance bond shall cover an additional one (1) year period after final acceptance by the City, with respects to faulty workmanship and materials. Both bonds shall be furnished by a corporate surety company authorized to do business in the state of Minnesota and acceptable to the City subject to the approval of the City Attorney as to form.
- B. To the fullest extent allowed by law the Contractor shall defend, indemnify and hold harmless the City of Bloomington, its officials, employees and agents, from any and all claims, causes of action, lawsuits, damages, losses, or expenses, including attorney fees, arising out of or resulting from the Contractor's (including its officials, agents, or employees) performance of the duties required under this Agreement, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, diseases or death or to injury to or destruction of property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission or willful misconduct of Contractor.

- C. The Contractor shall not commence work under this Contract until all insurance required under this article has been obtained and until copies of policies and certificates required by this article are submitted to: Office of the City Clerk, 1800 West Old Shakopee Road, Bloomington, MN 55431. The Contractor shall not allow any subcontractor to commence work on the project until subcontractor's insurance has been obtained and submitted to the Contractor.

1. Commercial General Liability and Property Damage Insurance.

The Contractor shall take out and maintain at its own cost and expense, commercial general liability and property damage insurance, during the period from the commencement until final completion of the any and all work under this contract. To the fullest extent allowed by law, said insurance shall protect the Contractor, any subcontractor performing work covered by the Contract, and the City from claims for any injury or property damage which may arise from operations under this Contract, whether operations be made by the Contractor, subcontractor, or by anyone directly or indirectly employed by either of them. This also includes claims arising by reason of any injury or damage sustained after the Contractor has completed the work or left the site thereof. The commercial general liability insurance shall be in the following amounts:

Bodily injury in the amount of at least \$500,000 per individual and \$1,500,000 for injuries or death arising out of each occurrence.

Property damage liability in the amount of \$1,500,000 for each occurrence.

To meet the above requirements, the Contractor may use a combination of Commercial General Liability and Umbrella coverage, as long as the City approves such use and it is evidenced on the Certificate of Insurance naming the City as an additional insured on both policies. The Umbrella needs to be a following form coverage and provide a thirty (30) day notice of cancellation.

2. Worker's Compensation Insurance.

The Contractor shall carry Worker's Compensation Insurance as required by Minnesota Statutes, Section 176.181 subd 2.

3. Business Automobile Liability Insurance.

Contractor shall secure and maintain during the life of this Contract business automobile liability insurance in the minimum amount of \$500,000 for bodily injuries, including death, for any one individual and \$1,500,000 per occurrence; and automobile property damage insurance in the minimum amount of \$1,500,000. Each motor vehicle, including hired vehicles, engaged in operation within the terms of this Contract shall be covered by such automobile insurance.

4. Certificates.

The Contractor further agrees to name the City as additionally insured on the commercial general liability and business automobile liability insurance policies. Copies

of all certificates, endorsements and policies, naming the City as additionally insured, shall be filed with the City Clerk. The certificates shall be executed by the insurer and shall expressly stipulate that the policies are non-cancelable until after thirty (30) days notice in writing to the City. The canceling company and/or the replacing company shall be responsible for all work completed prior to the cancellation of policies. All insurance policies and certificates shall be submitted prior to the execution of the Contract and shall be subject to the approval of the City Attorney.

- D. In the event of a dispute between the City and the Contractor, the parties hereto agree that the City Engineer shall determine the amount and quality of work in the Improvements included in the Contract. If no agreement can be reached, the City and the Contractor agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation. The mediation shall be conducted through the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, MN 55405. The parties hereto shall decide whether mediation shall be binding or non-binding. If the parties cannot reach agreement, mediation shall be non-binding. In the event mediation is unsuccessful, either party may exercise its legal or equitable remedies and may commence such action prior to the expiration of the applicable statute of limitations.
- E. The Contractor agrees to comply with the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. The Contractor agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the Contractor. Upon request accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities. The City has designated coordinators to facilitate compliance with the Americans with Disabilities Act of 1990, as required by Section 35.107 of the U.S. Department of Justice regulations, and to coordinate compliance with Section 504 of the Rehabilitation Act of 1973, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations.
- F. The parties agree to comply with the Minnesota State Human Rights Act, Minnesota Statutes, Section 363.
- G. The parties hereto agree to comply with Section 504 of the Rehabilitation Act of 1973/31 CFR Part 51. This Act states in part that, "...all recipients of federal funds, whether in the form of a grant or a contract, review, and if necessary modify, their programs and activities so that discrimination based on handicap is eliminated."
- H. The Contractor will comply with all applicable provisions of the Minnesota Government Data Practices Act, Chapter 13 of the Minnesota Statutes.
- I. The Contractor agrees that the City will own and have the right to use, reproduce and apply as it desires, any data, reports, analyses and materials which are collected or developed by the Contractor or anyone acting on behalf of the Contractor as a result of this Agreement.
- J. The Contractor agrees that it must pay any subcontractor within ten (10) days of the Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor agrees to pay interest of 1-1/2 percent per month, or any part

of a month, to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime Contractor must be awarded its costs and disbursements, including attorneys fees, incurred in bringing the action.

- K. Any material alterations, variations, modifications or waivers of provisions of this Agreement shall be valid only when they have been reduced to writing as an amendment to this Agreement and signed by both parties.
- L. Either party may terminate this Agreement, for any reason, upon giving thirty (30) days advanced written notice to the other party.

The City reserves the right to cancel this Agreement at any time in event of default or violation by the Contractor of any provision of this Agreement. The City may take whatever action at law or in equity that may appear necessary or desirable to collect damages arising from a default or violation or to enforce performance of this Agreement.

- M. This Agreement shall not be assignable except at the written consent of the City.
- N. This Agreement represents the entire Agreement between the Contractor and the City and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof, and amendments, addenda, alterations, or modifications to the terms and conditions of this Agreement shall be in writing and signed by both parties.
- O. The Contractor agrees, as a condition of being awarded this Contract, to require each of its agents, officers and employees to abide by the City of Bloomington's policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on City property at all times while performing duties pursuant to this Contract. The Contractor agrees and understands that a violation of any of these policies or rules constitutes a breach of the Contract and sufficient grounds for immediate termination of the Contract by the City.
- P. The parties agree that this Agreement shall be governed by the laws of the State of Minnesota.
- Q. Pursuant to Chapter 2, Article VII of the City Code, the Contractor agrees as follows:
 - 1. That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

2. That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
3. That a violation of this section is a misdemeanor; and
4. That this contract may be canceled or terminated by the City, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

R. Signature/Execution: The person signing this Agreement (hereafter "Signatory") represents and warrants that the Contractor has authorized him/her to execute this Agreement on its behalf and agrees to be bound by its terms and conditions, including the agreement of the Contractor to indemnify and hold the City harmless. In the event the Contractor did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liability of the Contractor, as set forth herein, personally.

IN WITNESS WHEREOF the parties hereto have executed this Agreement, the date and year first written above.

City of Bloomington	<div style="display: flex; justify-content: space-between; margin-bottom: 20px;"> <div style="width: 45%;">DATED: _____</div> <div style="width: 45%;">By: _____ Mayor</div> </div> <div style="display: flex; justify-content: space-between; margin-bottom: 20px;"> <div style="width: 45%;">DATED: _____</div> <div style="width: 45%;">By: _____ City Manager</div> </div> <p>Reviewed and approved by the City Attorney.</p> <p>_____</p> <p style="text-align: center;">City Attorney</p>
Contractor	<div style="display: flex; justify-content: space-between; margin-bottom: 20px;"> <div style="width: 45%;">DATED: _____</div> <div style="width: 45%;">By: _____</div> </div> <p style="text-align: center;">Title of Signatory: _____</p> <p style="text-align: center;">Name of Company: _____</p>